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207621

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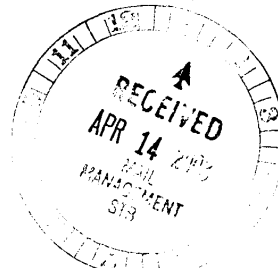
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LOUIS E. GITOMER  
OF COUNSEL  
(202) 466-6532

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April 14, 2003

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, DC 20423



**RE:** Finance Docket No. 34339, *The Huron & Eastern Railway Company, Inc. and Saginaw Valley Railroad Company, Inc.—Corporate Family Merger Exemption*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(3), a check covering the \$1,300.00 filing fee, 20 additional maps, along with file Notice.doc on three 3.5-inch IBM-compatible floppy diskettes.

Please time and date stamp the extra copy of this letter and the Notice of Exemption and return them with our messenger.

If you have any questions, please contact me.

Respectfully submitted,

**FEE RECEIVED**

APR 14 2003

**SURFACE  
TRANSPORTATION BOARD**

Louis E. Gitomer

ENTERED  
Office of Proceedings  
APR 14 2003  
Part of  
Public Record

Enclosures

**FILED**

APR 14 2003

**SURFACE  
TRANSPORTATION BOARD**

PORTLAND, OREGON

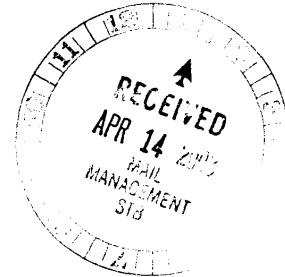
WASHINGTON, D.C.

BEND, OREGON

207621  
**ORIGINAL**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34339



THE HURON & EASTERN RAILWAY COMPANY, INC. AND SAGINAW VALLEY  
RAILROAD COMPANY, INC.—CORPORATE FAMILY MERGER EXEMPTION

VERIFIED NOTICE OF EXEMPTION

**FEE RECEIVED**  
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SURFACE  
TRANSPORTATION BOARD

**FILED**  
APR 14 2003  
SURFACE  
TRANSPORTATION BOARD

Gary A. Laakso, Esq.  
Vice President Regulatory Counsel  
RailAmerica, Inc.  
5300 Broken Sound Boulevard N.W.  
Second Floor  
Boca Raton, FL 33487  
(561) 994-6015

Louis E. Gitomer, Esq.  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005  
(202) 638-3307

ENTERED  
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Part of  
Public Record

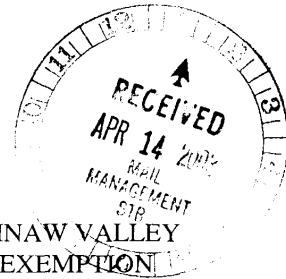
Attorneys for: THE HURON & EASTERN  
RAILWAY COMPANY, INC. AND  
SAGINAW VALLEY RAILROAD  
COMPANY, INC.

Dated: April 14, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34339

THE HURON & EASTERN RAILWAY COMPANY, INC. AND SAGINAW VALLEY  
RAILROAD COMPANY, INC.—CORPORATE FAMILY MERGER EXEMPTION



VERIFIED NOTICE OF EXEMPTION

The Huron & Eastern Railway Company (“HESR”) and the Saginaw Valley Railroad Company (“SGVY”), pursuant to 49 C.F.R. §§ 1180.2(d)(3) and 1180.4(g), file this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 11323 with the Surface Transportation Board (the “STB”). This Verified Notice of Exemption is being filed to permit SGVY to merge into HESR. HESR and SGVY are each Class III railroad subsidiaries of RailAmerica, Inc.<sup>1</sup>

a. **1180.6(a)(1)(i).** A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

RailAmerica, Inc. directly controls Palm Beach Holding, Inc., which directly controls RailAmerica Transportation Corporation which directly controls HESR and SGVY.<sup>2</sup> This is a transaction within a corporate family. SGVY will merge into HESR with HESR as the surviving corporation. Today, all of SGVY’s operations are performed by HESR. This transaction will not

<sup>1</sup> *RailAmerica, Inc.—Corporate Family Transaction Exemption—Huron and Eastern Railway Company, Inc., and Saginaw Valley Railway Company, Inc.*, ICC Finance Docket No. 32068 (ICC served June 18, 1992).

<sup>2</sup> The address for RailAmerica, Palm Beach Holding, Inc., and RailAmerica Transportation Corporation is 5300 Broken Sound Boulevard, N.W., Boca Raton, FL 33487.

result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The transaction will reduce corporate overhead, state taxes, and duplication by eliminating a corporation while retaining the same assets to serve customers.

Huron & Eastern Railway Company, Inc. (“HESR”), 101 Enterprise Drive, Vassar, MI 48768 (telephone 800-968-1975) began operations in 1986 and operates only in the State of Michigan. It owns or operates about 171 miles between Saginaw, milepost 0.0, and the end of track, milepost 108.3, which includes trackage rights over CSXT in Saginaw, MI between milepost 0.0 and 2.0. HESR also operates over six branch lines between: (1) end of track, milepost 14.1, and Denmark Junction, milepost 15.0; (2) Munger, milepost 100.6, and Millington, milepost 79.6; (3) Vassar, milepost 86.2, and Colling, milepost 22.1; (4) Bad Axe, milepost 64.5, and Kinde, milepost 9.4; (5) Palms, milepost 82.4, and the end of the line via Ruth, milepost 8.69; and (6) Sandusky, milepost 0.66, and the main line between Deckerville and Carsonville.<sup>3</sup>

Saginaw Valley Railroad Company, Inc. (“SGVY”), 101 Enterprise Drive, Vassar, MI 48768 (telephone 800-968-1975) began operations in 1991 in the State of Michigan. It owns and operates over about 56.72 miles of rail line in Michigan between Denmark Junction, milepost 14.1 and east of Richville, milepost 13.2, and between Brown City, milepost 55.82, and Steering

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<sup>3</sup> HESR acquired the lines it operates in the following proceedings: *Huron and Eastern Railway Company—Exemptions*, ICC Finance Docket No. 30754 (ICC served January 16, 1986); *The Huron and Eastern Railway Company, Inc.—Acquisition—CSX Transportation, Inc. Line Between Bad Axe and Saginaw, MI*, ICC Finance Docket No. 31316 (ICC served December 19, 1988); *Huron and Eastern Railway Company, Inc.—Trackage Rights Exemption—Saginaw Valley Railway Company, Inc.*, ICC Finance Docket No. 31818 (ICC served January 29, 1991); *Huron and Eastern Railway Company Modified Rail Certificate*, ICC Finance Docket No. 31815

Gear, milepost 4.5. SGVY has trackage rights over CSXT between Steering Gear, milepost 4.5, and Saginaw, milepost 0.0.<sup>4</sup>

Counsel to whom questions concerning the transaction can be addressed are: Gary A. Laakso, Esq., Vice President Regulatory Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard N.W., Boca Raton, FL 33487, (561) 994-6015, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, D.C. 20005, (202) 638-3307.

b. **1180.6(a)(1)(ii).** The proposed time schedule for consummation of the proposed transaction.

SGVY intends to merge into HESR on or after April 21, 2003.

c. **1180.6(a)(1)(iii).** The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The merger of SGVY into HESR is intended to reduce costs and save State taxes.

d. **1180.6(a)(5).** A list of the State(s) in which any part of the property of each applicant carrier is situated.

HESR and SGVY operate in the state of Michigan.

e. **1180.6(a)(6). Map (Exhibit 1).** Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the

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(ICC served January 29, 1991); and *Huron and Eastern Railway Company, Inc.—Acquisition—CSX Transportation, Inc.*, STB Finance Docket No. 32826 (STB served March 8, 1996).

<sup>4</sup> SGVY acquired the lines it operates in the following proceedings: *Saginaw Valley Railway Company, Inc.—Acquisition and Operation Exemption—Tuscola & Saginaw Bay Railway Company, Inc.*, ICC Finance Docket No. 31814 (ICC served January 9, 1991); *Saginaw Valley Railway Company, Inc.—Acquisition Exemption—CSX Transportation, Inc.*, ICC Finance Docket No. 32829 (ICC served July 24, 1996); *Saginaw Valley Railway Company—Joint Relocation Project Exemption—Huron and Eastern Railway Company*, STB Finance Docket No. 34089 (STB served September 11, 2001).

transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

*See Exhibit 1.*

f. **1180.6(a)(7)(ii). Agreement (Exhibit 2).** Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

The Agreement and Plan of Merger necessary to effectuate the merger of SGVY into HESR is in Exhibit 2.

g. **Labor Protection.**

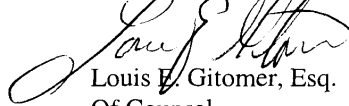
Under 49 U.S.C. § 11326(c), labor protection is not to be imposed since HESR and SGVY are both class III railroads, and the surviving company will also be a class III railroad.

**h. Environmental and Historical documentation.**

This transaction qualifies for classification under 49 C.F.R. §1105.6(c)(2) and thus neither an Environmental Assessment nor a Historic Report is required to be filed.

Gary A. Laakso, Esq.  
Vice President Regulatory Counsel  
RailAmerica, Inc.  
5300 Broken Sound Boulevard N.W.  
Second Floor  
Boca Raton, FL 33487  
(561) 994-6015

Respectfully submitted,



Louis E. Gitomer, Esq.  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005  
(202) 638-3307

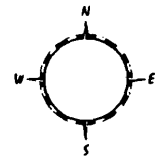
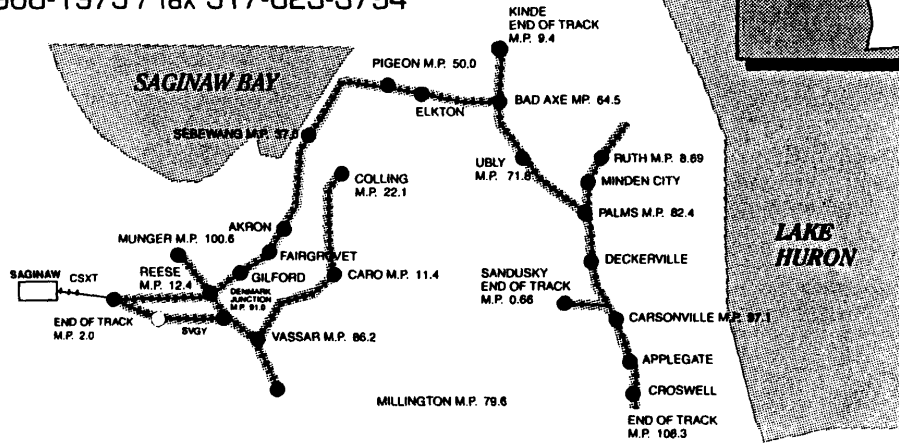
Attorneys for: THE HURON & EASTERN  
RAILWAY COMPANY, INC. AND  
SAGINAW VALLEY RAILROAD  
COMPANY, INC.

Dated: April 14, 2003

# EXHIBIT 1

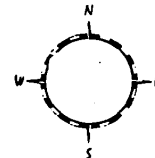
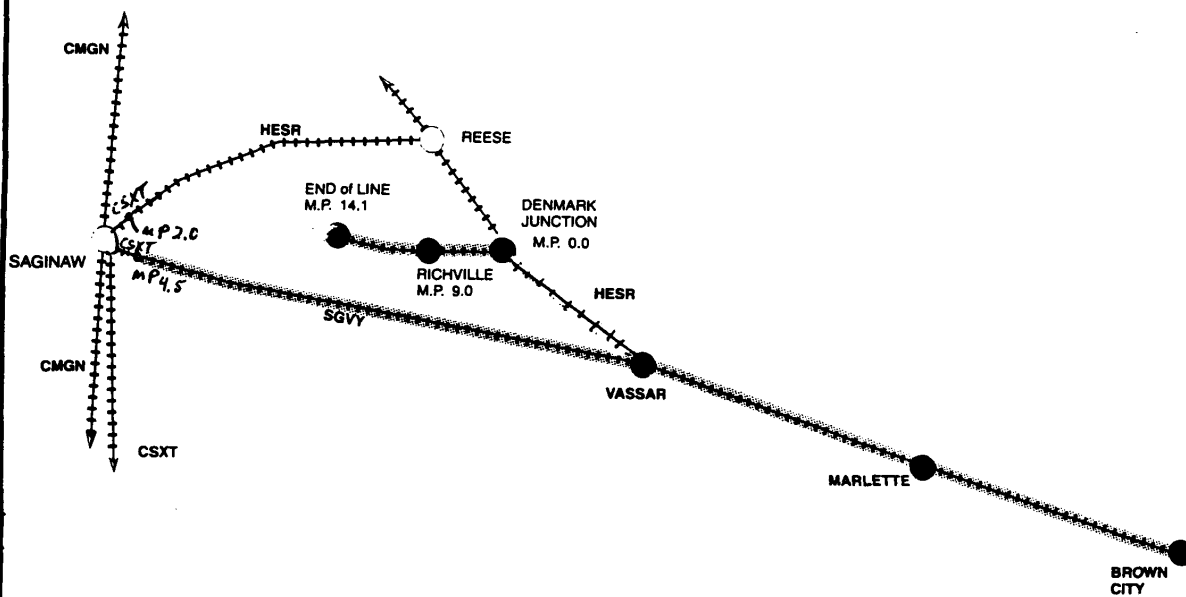
# HURON & EASTERN RAILROAD (HESR)

101 Enterprise Drive  
Vassar, Michigan 48768  
800-968-1975 / fax 517-823-3794



## SAGINAW VALLEY RAILWAY (SGVY)

101 Enterprise Drive  
Vassar, Michigan 48768  
800-968-1975 / fax 517-823-3794



# **EXHIBIT 2**

## **AGREEMENT AND PLAN OF MERGER**

This Agreement and Plan of Merger (this "Agreement") is made and entered into as of the 4<sup>th</sup> day of April, 2003, by and between Saginaw Valley Railway Company, Inc., a Texas corporation (the "SGVY"), and Huron & Eastern Railway Company, Inc., a Michigan corporation (the "HESR"). The HESR and SGVY shall hereafter at times be collectively referred to as the "Railroad Corporations".

In consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto hereby agree as follows:

### **ARTICLE I.**

#### **MERGER OF SGVY INTO HESR**

1.01. On the Effective Date (as hereinafter defined), the SGVY shall be merged with and into the HESR, and the separate existence of SGVY shall cease. The HESR shall continue its corporate existence under, and shall be governed by, the laws of the State of Michigan.

1.02. This Agreement shall be submitted for approval to the shareholders of (i) the HESR in the manner prescribed by and in accordance with the laws of the State of Michigan, and (ii) the SGVY in the manner prescribed by and in accordance with the laws of the State of Delaware. If this Agreement is approved by the shareholders of HESR and by the shareholders of the SGVY in the manner prescribed by and in accordance with the laws of the State of Michigan and by the shareholders of the SGVY in the manner prescribed by and in accordance with the laws of the State of Delaware, Articles of Merger reflecting this Agreement in the form required by Michigan law shall be delivered to the Secretary of State of Michigan and a Certificate of Merger in the form required under Section 252 of the Delaware General Corporation Law shall be delivered to the Secretary of the State of Delaware. The merger of the SGVY with and into the HESR shall become effective at 11:59 p.m., Eastern Standard Time, on May 1, 2003 (the "Effective Date").

1.03. The Board of Directors of each of the Constituent Corporations has adopted and approved this Agreement in the manner prescribed by and in accordance with the laws of the State of Michigan and the State of Delaware.

### **ARTICLE II.**

#### **STATUS OF SHARES; MANNER OF CONVERSION**

2.01. There are presently outstanding Five thousand (5,000) shares of \$1.00 par value common stock of the HESR (hereinafter referred to as the "HESR Common

Stock”) and Five thousand (5,000) shares of \$0.10 par value common stock of the SGVY (the “SGVY Common Stock”).

2.02. On the Effective Date, each share of the SGVY Common Stock shall automatically be cancelled, and the HESR Common Stock shall continue unchanged and be issued and outstanding capital stock of the HESR. The Shareholders of the SGVY will receive no consideration of any kind for the SGVY.

### ARTICLE III.

#### EFFECT OF MERGER

3.01 The Board of Directors and Officers of HESR as of the Effective Date shall continue as the Board of Directors and Officers of HESR until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the HESR’s Certificate of Incorporation and Bylaws and the Michigan General Corporation Law.

3.02 The Certificate of Incorporation and the Bylaws of HESR in effect on the Effective Date, until altered, amended or repealed as provided therein or by the Michigan General Corporation Law.

3.03 On the Effective Date, the HESR shall possess all the rights, privileges, powers and franchises as well of a public or private nature, and be subject to all the restrictions disabilities and duties of each of the Railroad Corporations; and all the rights, privileges, powers and franchises of each of the Railroad Corporations, and all property, real, personal and mixed, and all debts due to either of the Railroad Corporations on whatever account, and all other things in action or belonging to each of such corporations shall be vested in the HESR; and all property, rights, privileges, powers and franchises, and all an every other interest shall be thereafter as effectually the property of the HESR as they were of the respective Railroad Corporations, and the title to any real estate vested by deed or otherwise in any of such Railroad Corporations shall not revert or be in any way impaired by reason of the merger of the Railroad Corporations; but all rights of creditors and all liens upon any property of any of said Railroad Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective Railroad Corporations shall attach to the HESR, and may be enforced against it to the same extent as if said debts, liabilities and duties have been incurred or contracted by it.

### ARTICLE IV.

#### MISCELLANEOUS

4.01 The merger provided for herein may be abandoned, prior to the Effective Date, by the Board of Directors of the Railroad Corporations in the exercise of their sole and independent discretion without the approval or authorization of the shareholders of the Railroad Corporations.

4.02 This Agreement may be amended by the parties hereto, at any time before or after approval of the merger by the shareholders of the Railroad Corporations, but, after any such approval, no amendment shall be made that materially adversely affects the rights of such shareholders (other than an abandonment of the merger as provided above) without the further approval of such shareholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

4.03 If at any time HESR shall consider or be advised that any further Assignment or assurance in law or other action is necessary or desirable to vest, perfect or confirm, of record or otherwise, in HESR the title to any property or rights of the SGVY acquired by or as a result of this merger, the proper officers and directors of the SGVY and the HESR, respectively, shall be, and they hereby are, severally and fully authorized to execute and deliver such deeds, assignments and assurances and take such other action as may be necessary or proper in the name of the SGVY and HESR and otherwise carry out the purposes of this Agreement.

4.04 This Agreement is made pursuant to and shall be governed by the laws of the State of Michigan, except to the extent that the laws of the State of Delaware are applicable hereto.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement as of the date first above written.

HURON & EASTERN RAILWAY COMPANY, INC.

By: Larry W Bush  
Name: Larry W Bush  
Title: VP & Treasurer

SAGINAW VALLEY RAILWAY COMPANY, INC.

By: M D Hewie  
Name: M D Hewie  
Title: SGV + CEO

**UNANIMOUS WRITTEN CONSENT OF  
THE SOLE SHAREHOLDER AND  
THE BOARD OF DIRECTORS OF  
HURON & EASTERN RAILWAY COMPANY, INC.**

The undersigned, being the Sole Shareholder and all of the members of the Board of Directors of Huron and Eastern Railway Company, Inc., a Michigan corporation (the "Corporation"), acting in lieu of a meeting of the Sole Shareholder and the Board of Directors of the Corporation pursuant to Delaware corporate law, do hereby consent to, adopt and approve in all respects the following resolutions and the transactions set forth or contemplated therein:

WHEREAS, there has been presented to the undersigned Board of Directors a proposed Agreement and Plan of Merger (the "Agreement"), a copy of this is attached as Exhibit A to this Consent, which Agreement provides for the merger of Saginaw Valley Railway Company, Inc. ("SGVY") with and into the Corporation; and

WHEREAS, there has been presented to the undersigned Sole Shareholder a copy of the above-referenced Agreement; and

WHEREAS, the Sole Shareholder deems it to be in the best interests of this Corporation that the Agreement be approved and that the Corporation be merged with and into HESR;

NOW, THEREFORE, be it

RESOLVED, that the terms and conditions of the proposed Agreement be and they hereby are approved, and that any Vice President and the Secretary, as may be required, are authorized and empowered to execute and deliver the Agreement, with such changes therein as the officers executing the same may deem necessary and proper; and

RESOLVED FURTHER, that the undersigned Board of Directors recommends that the Agreement be submitted to and approved by the Sole Shareholder of the Corporation in accordance with the applicable requirements of the Delaware corporate law; and

RESOLVED FURTHER, that said officers of this Corporation are directed to execute, acknowledge and file such instruments, including Articles of Merger, and do such other acts in the name and on behalf of this Corporation as they deem necessary or proper to fully perform the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the undersigned Sole Shareholder and the Board of Directors have executed this Consent effective as of the 28 day of April, 2003.

**SOLE SHAREHOLDER:**

RAILAMERICA TRANSPORTATION  
CORP.

By: Larry W Bush  
Name: Larry W Bush  
Title: VP & Treasurer

**BOARD OF DIRECTORS:**

Gary O. Marino  
Gary O. Marino  
Donald D. Redfearn  
Donald D. Redfearn

**UNANIMOUS WRITTEN CONSENT OF  
THE SOLE SHAREHOLDER AND  
THE BOARD OF DIRECTORS OF  
SAGINAW VALLEY RAILWAY COMPANY, INC.**

The undersigned, being the Sole Shareholder and all of the members of the Board of Directors of Saginaw Valley Railway Company, Inc., a Delaware corporation (the "Corporation"), acting in lieu of a meeting of the Sole Shareholder and the Board of Directors of the Corporation pursuant to Delaware corporate law, do hereby consent to, adopt and approve in all respects the following resolutions and the transactions set forth or contemplated therein:

WHEREAS, there has been presented to the undersigned Board of Directors a proposed Agreement and Plan of Merger (the "Agreement"), a copy of this is attached as Exhibit A to this Consent, which Agreement provides for the merger of the Corporation with and into Huron & Eastern Railway Company, Inc., a Michigan corporation (the "HESR"); and

WHEREAS, there has been presented to the undersigned Sole Shareholder a copy of the above-referenced Agreement; and

WHEREAS, the Sole Shareholder deems it to be in the best interests of this Corporation that the Agreement be approved and that the Corporation be merged with an into HESR;

NOW, THEREFORE, be it

RESOLVED, that the terms and conditions of the proposed Agreement be and they hereby are approved, and that any Vice President and the Secretary, as may be required, are authorized and empowered to execute and deliver the Agreement, with such changes therein as the officers executing the same may deem necessary and proper; and

RESOLVED FURTHER, that the undersigned Board of Directors recommends that the Agreement be submitted to and approved by the Sole Shareholder of the Corporation in accordance with the applicable requirements of the Delaware corporate law; and

RESOLVED FURTHER, that said officers of this Corporation are directed to execute, acknowledge and file such instruments, including Articles of Merger, and do such other acts in the name and on behalf of this Corporation as they deem necessary or proper to fully perform the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the undersigned Sole Shareholder and the Board of Directors have executed this Consent effective as of the 08 day of April, 2003.

**SOLE SHAREHOLDER:**

RAILAMERICA TRANSPORTATION  
CORP.

By: Larry W Bush  
Name: Larry W Bush  
Title: VP & Treasurer

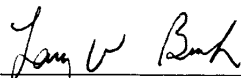
**BOARD OF DIRECTORS:**

Gary O. Marino  
Gary O. Marino  
Donald D. Redfean  
Donald D. Redfean

**CERTIFICATION**

State of Florida                     )  
                                                      )ss  
County of Palm Beach            )

Larry Bush, being duly sworn, deposes and says that he is Vice President-Treasurer of  
The Huron & Eastern Railway Company and Saginaw Valley Railroad Company, and that he has  
read the foregoing, knows the contents thereof, and that the same are true as stated to the best of  
his knowledge, information and belief.

  
\_\_\_\_\_  
Larry Bush

Subscribed and sworn to before me this 16<sup>th</sup> day of April 2003.

  
\_\_\_\_\_  
Notary Public

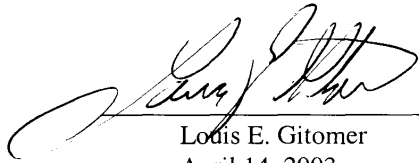
My Commission expires: \_\_\_\_\_



**Nancy J. Damon**  
Commission # CC 990039  
Expires Feb. 4, 2005  
Bonded Through  
Atlantic Bonding Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 34339, The Huron & Eastern Railway Company, Inc. and Saginaw Valley Railroad Company, Inc.—Corporate Family Merger Exemption, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the States of Florida and Michigan.

  
\_\_\_\_\_  
Louis E. Gitomer  
April 14, 2003